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SUBJECT: PRESIDENT SIGNS ANTI-TRAFFICKING LAW

REF: JAKARTA 778

¶1. Summary. President Yudhoyono signed the comprehensive Anti-Trafficking Law on April 19. Passed by Parliament on March 20 (reftel), the law would have gone into effect automatically but the President's signature was a signal of his personal support of the law. NGOs which lobbied for over two years for passage of a strong law said it includes all the major elements needed to fight trafficking and that the lawmaking process was noteworthy for inclusion of suggestions from Indonesian civil society and international NGOs. End summary.

¶2. Indonesia's new comprehensive Anti-Trafficking Law went into effect with President Yudhoyono's signature on April 19: Law Number 21 of 2007 on the Eradication of Criminal Acts of Trafficking in Persons. Even without the President's signature, it would have gone into effect automatically then since it was 30 days after Parliament passed the law. The President demonstrated his political will to fight trafficking by penning the bill.

¶3. NGOs commented that one reason for success in producing a strong law was the transparency in the drafting process. As one leading Indonesian civil society expert on trafficking said, the Parliamentary special committee which drafted the bill was "most open and accommodating to inputs from stakeholders, especially to concerns from both Indonesian civil society and international organizations." In fact, the law's passage was delayed from November 2006 until March 2007 because civil society was still not content with some provisions as of late last year, and these were ironed out during the intervening months. Three international NGOs that worked with Indonesian civil society over two years to lobby Parliament and the GOI for a strong law agreed that it has strong provisions on all major elements needed to fight trafficking.

Key Definitions Meet International Standards

¶4. Follows (paras 4-10) are consensus observations by the International Organization for Migration (IOM), American Center for International Labor Solid (ACILS) and The Asia Foundation (TAF):

Key definitions are included in the main body of the bill, including exploitation, sexual exploitation and debt bondage.

Law enforcement and prosecutors can clearly see that these definitions have legal force, more so than if the terms were defined in the elucidation appendix to the law, as originally proposed. Some key definitions in the law include:

-- Definition of debt bondage corresponds well to the international definition.

-- Child is defined as under age 18, consistent with international definitions.

-- Definition of trafficking is consistent with international standards, criminalizing both cross border and internal trafficking.

-- There is a specific criminal provision for trafficking by government officials.

-- Consent of victim is irrelevant to trafficking, consistent with international standards.

-- Falsification of documents is criminalized.

-- One clause allows corporate entities to be charged with trafficking, a stipulation which can be applied to illegal manpower recruitment and placement agencies.

-- Not all illegal adoptions are considered trafficking, only adoptions "with the intention of exploitation," consistent with international standards.

Harsher Punishments for Trafficking

15. The law also provides harsher punishments for trafficking than in previous Indonesian laws. Standard sentencing under the Anti-Trafficking Law is a minimum of three years and a maximum of 15 years in prison, and a minimum fine of 120 million rupiah (USD 13,200) to a maximum fine of 600 million rupiah (USD 66,000). The sentence will be one-third higher if the act causes serious injury, mental disturbance, infectious disease, pregnancy or endangers life. The same is true if the act is committed against a child (under age 18, including unborn babies). If the act results in death, the perpetrator is subject to between five years and life in

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prison and a fine of between 200 million rupiah (USD 22,000) and five billion (USD 550,000). Government officials guilty of trafficking are liable to a one-third higher sentence. By comparison, previous laws provided less harsh punishments: maximum six years in prison for trafficking, nine years for rape -- maximum 12 years if the rape resulted in injury; maximum 15 years if rape resulted in death. The Anti-Trafficking Law notably provides minimum sentences, although it will be up to the court's discretion to choose between the more lenient three years and the harsher 15 years, depending on circumstances.

Victim and Witness Protection

16. There is an entire chapter on Protection of Witnesses and Victims, with confidentiality principles for witnesses and victims and stipulation that victims do not have to testify in court; they can testify remotely by audio or video. Victims and witnesses have rights to be accompanied by an advocate or other support person and to be kept informed on the progress in the case. Children receive special provisions during court proceedings and victims receive special police services during investigation.

Public Services for Victims

17. The law provides reasonably good stipulations for services to be provided by the government, including return, reintegration and basic services such as medical attention. The law orders the government to provide mechanisms for such services. A major drawback to this part of the law is that it requires the victim to report the crime to police in order to receive these services. This does not follow international standards and IOM had lobbied strongly against that requirement. The law does cover services for foreign nationals trafficked to or within Indonesia, although it does not provide for the possibility of a long stay during a criminal proceeding nor for the possibility that the victim might not want to return to country of origin; i.e., the question of the right to stay or work in Indonesia is not

addressed.

Restitution

¶18. The law provides for restitution by the perpetrator to the victim upon decision by the court, an unanticipated and welcome addition to the law. The law provides for freezing of bank accounts during investigation but not for other means to get at the traffickers assets.

Prevention

¶19. The law has strong provisions calling for overall efforts by the GOI to prevent and address trafficking through task forces, budget allocation, international cooperation and opening avenues to civil society to engage in these efforts. The law does little to ensure that budgets will be allocated.

Deficiencies in Law

¶10. The requirement that victims report their crime to police in order to receive services was the biggest negative pointed out by NGOs, in that all victims need services but many do not want to file charges. A second major question is defining which ministries are responsible for providing which

services. Both of these issues could be resolved through implementing regulations. Finally, the Ministry of Women's Empowerment will be responsible for drafting implementing regulations, but will require strong cooperation from the law enforcement agencies if the law is to be effective.

Next Steps

¶11. Drafting of implementing regulations and actual implementation of the law will be the next crucial steps. Also crucial will be socializing the law among law enforcement agencies, other government agencies, and civil society so that the law is known and understood. Educating officials and the public at the local levels will be important because of Indonesia's decentralized system.

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